

### **REMARKS**

Claims 1 – 26 are pending, of which claims 16 – 26 are withdrawn.

Claims 1 and 14 – 15 have been amended. New claim 27 has been added. Support for the amendments may be found in at least the following portions of the originally filed specification: page 14, line 28 – page 15, line 11; page 15, lines 30 – 33; page 17, line 27 – page 18, line 11; page 20, lines 14 – 22; page 20, line 30 – page 21, line 16; page 21, line 29 – page 22, line 4. No new matter has been added.

Applicants traverse all of the rejections in the Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons.

### **REJECTION OF CLAIMS 1-15 UNDER 35 U.S.C. §103**

Claims 1 – 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gordon et al. WO 98/31115 (hereinafter “Gordon”) in view of Coleman et al., U.S. Patent No. 5,844,620 (hereinafter “Coleman”) and Ota et al., U.S. Patent No. 6,198,478 (hereinafter “Ota”).

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. The key to supporting a rejection under 35 U.S.C. §103 is the clear articulation of the reasons why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. “[R]jections on obviousness grounds cannot be sustained by mere conclusory statements;

instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (Fed.Cir. 2006), *cited with approval by KSR Int'l Co. v. Teleflex, Inc.*, 126 S. Ct. 2965 (2006); *see also* MPEP §2141.

The Office Action does not establish a *prima facie* case of obviousness because the combination of Gordon, Coleman, and Ota suggested by the Examiner fails to teach or suggest all the limitations of claim 1.

First, claim 1 recites:

"a transport stream generator configured to: determine, based on the received information, an unaccessed demand-cast guide page of a transport stream,"

where the received information is the "demand-cast guide usage information received from the session manager." The Examiner suggests that this limitation is taught by the combination of Gordon, Coleman, and Ota (see Final Office Action, pages 4 – 5). In particular, the Examiner suggests that Gordon discloses receiving demand-cast content item usage information (see Final Office Action, page 4, citing Gordon), where such information is a request from the session manager for information (e.g., PID) associated with a program requested by a terminal (see Gordon, page 9, line 26 – page 10, line 7). The Examiner further suggests that Ota teaches determining whether there is a demand cast content item that is not currently being accessed (see Final Office Action, page 5).

Assuming *arguendo* that the Examiner's interpretation of Gordon and Ota is correct, Applicants fail to see how the combination of these features makes obvious the feature of determining an unaccessed demand-cast content item based on the demand-cast content item usage information. In particular, if the demand-cast content item usage merely includes information related to a requested demand-cast content item (e.g., program), such information simply cannot facilitate determination of a particular demand-cast content item that is currently unaccessed. Not even the conclusion that the requested demand-cast content item has been unaccessed could be made. For example, such a demand-cast content item might be currently accessed by another terminal. Accordingly, the suggested combination of Gordon, Coleman, and Ota does not

teach or suggest at least a transport stream generator configured to determine an unaccessed demand-cast guide page based on the demand-cast guide usage information received from a session manager.

Second, according to amended claim 1, an unaccessed demand page is replaced with a replacement demand-cast page “by substituting a demand-cast stream of the unaccessed demand-cast page with a demand-cast stream of the replacement demand-cast page” (emphasis added). The Examiner relies on Ota “for the teaching of releasing demand content which is no longer being viewed so as to allow the bandwidth to be used for other content” (see Advisory Action, page 2). However, Ota fails to teach the substituting feature of Applicants’ claim 1. Rather, Ota discloses that when a viewer requests a specific program that is not currently being broadcasted the system seeks an empty channel and the requested program is transmitted using such a channel. Because, in Ota, the availability of an empty channel is a prerequisite for distributing the requested program (see Ota, col. 8, lines 39 – 43), Ota simply cannot teach “substituting a demand-cast stream of the unaccessed demand-cast page with a demand-cast stream of the replacement demand-cast page,” as recited in independent claim 1.

Finally, Applicants have added additional limitations to claim 1. More specifically, claim 1 now recites

“the transport stream comprising multiple demand-cast streams containing corresponding demand-cast guide pages, wherein the demand-cast guide pages were generated as video sequences.”

Neither the cited references, nor their permissible combinations teach or suggest such a limitation. Accordingly, Applicants respectfully submit that claim 1 is allowable over Gordon in view of Coleman and Ota under 35 U.S.C. §103.

Claims 2 – 15 and 27 depend from claim 1, directly or indirectly, and thus, inherit the allowable subject matter of claim 1. Therefore, claims 2 – 15 and 27 are also allowable over Gordon in view of Coleman and Ota for at least the reasons given above with respect to claim 1.

Applicants respectfully request the Examiner to withdraw the rejection.

**CONCLUSION**

For the foregoing reasons, Applicants respectfully request reconsideration and passage of the claims to allowance. If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 842-8110 X120 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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